COMMUNITIES COMMITTEE
Planning etc. (Scotland) Bill

Written evidence from Scottish Public Services Ombudsman

Background
The office of the Scottish Public Services Ombudsman (SPSO) came into operation in October 2002 with the aim of creating a one-stop shop for complaints about public bodies in Scotland. The new office replaced four previous Ombudsman services – The Scottish Parliamentary, Health Service and Local Government Ombudsmen and The Housing Association Ombudsman for Scotland.

Under the SPSO Act (2002), we can investigate complaints about local authorities and the Scottish Executive Inquiry Reporters Unit. The Ombudsman deals with a large number of planning complaints and the SPSO is an integral part of the administrative justice system.

The SPSO was involved in the pre-white paper consultation process, Rights of Appeal in Planning. We provided information on the wide range of planning complaints we receive and investigate. We also commented orally on the white paper after its publication.

Planning Complaints
During the 18 months from April 2004 to September 2005 the SPSO determined 293 planning complaints. We received 186 enquiries about planning during the same period.

Complaint subject categories (April 2004 – September 2005):

<table>
<thead>
<tr>
<th>Subject</th>
<th>Total</th>
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<tbody>
<tr>
<td>Advertisement of proposals: notification and hearing of objections</td>
<td>3</td>
</tr>
<tr>
<td>Civic amenity: general objection to proposals, calls for planning inquiries</td>
<td>8</td>
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<tr>
<td>Complaints handling</td>
<td>3</td>
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<tr>
<td>Conservation areas, listed buildings, tree preservation orders</td>
<td>7</td>
</tr>
<tr>
<td>Development Plans - breaches/procedures and enquiries</td>
<td>9</td>
</tr>
<tr>
<td>Handling of application (complaints by applicants)</td>
<td>36</td>
</tr>
<tr>
<td>Handling of application (complaints by opponents)</td>
<td>166</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
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<tr>
<td>Policy/administration</td>
<td>32</td>
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<tr>
<td>Rights of way and public footpaths</td>
<td>4</td>
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<tr>
<td>Travelling people</td>
<td>2</td>
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<tr>
<td>Unauthorised developments: calls for enforcement action/stop and discontinuation notices</td>
<td>16</td>
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<tr>
<td>Zoning of local authorities; planning blight; flood prevention</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>293</strong></td>
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Of the complaints, 40 were not within our jurisdiction or were withdrawn. 129 had come to us before going through the complaints process of the relevant authority. Of those we examined or investigated, 16% were either fully or partly upheld.

More than half of the complaints were made by objectors to an application, many of whom were unhappy with a decision they would have liked to see rescinded. In many cases, complaints come to us because, while the planning process may have been followed, that process can be confusing and is often not plainly presented nor decisions clearly communicated to members of the public.

**Comment**

In general, we welcome the proposals in the Bill. We think they will make the planning process more easily understood, less liable to delay, more accessible and more transparent. The ‘Hierarchy for Planning’ will assist this. We also welcome the defining place given to development planning as a means of involving the community in the planning strategy within which specific planning applications will be considered. The confusion caused by out-of-date structure and local plans underlies many of the complaints we see.

**Recruitment**

We are aware of the problem of recruiting qualified planners and the consequent delays in dealing with planning applications. We encourage any moves to increase the number of trained and qualified planners.

**Hearings and Appeals**

We welcome the proposals on hearings and appeals, and support the introduction of standardised practices throughout all the planning authorities. We regard unambiguous guidance on the conduct of hearings as essential. The guidance should take into account human rights legislation, and the need to help ‘balance the playing field’ for an individual facing a council, agency or development company with considerable resources at its disposal.

**Schemes of Delegation**

We welcome the proposals for enhanced delegation to officers combined with the right of appeal and the right of the authority to decide itself to determine an application.

We welcome the proposal under section 43B(1) and 47A(1) that a party to the proceedings is not to raise any matter that was not before the appointed person at the time the determination was reviewed, was made or which was not before the planning authority at the time the decision appealed against was made.

**Pre-application Discussions**

In our 2004 – 2005 Annual Report we state that we regard pre-application discussions between the applicant and authority as ‘best practice and a key part of the planning process’. We also welcome the proposals for the
developer to engage with the local community at an early stage and in the specific circumstances as outlined in the Bill.

**Standard Application Forms**
We welcome the proposal for standard forms and the increased use of e-planning. We recommend the production of standardised advice notes for both planners and objectors.

**Neighbour Notification**
One of the frustrations frequently recorded in complaints relates to the current system of neighbour notification. The proposal to make neighbour notification the responsibility of the planning authorities should make this process clearer and more accurate. It will also make the route for complaining about a failure to notify more transparent and accessible.

We commend the proposed improvements on providing information on how planning applications have been dealt with.

**Planning obligations and good neighbour agreements**
Who decides whether a good neighbour agreement is desirable or necessary?

These are both areas that are likely to be the subject of complaints to the Ombudsman.

**Enforcement**
We welcome the proposals to improve planning enforcement through temporary stop notices and enforcement charters.

**Assessing the Quality of Stakeholder Engagement**
The Bill envisions an enhanced role for reporters in assessing the quality of stakeholder engagement by planning authorities. The Ombudsman has the power to assess the quality of stakeholder engagement by planning authorities and we would urge the Executive to ensure that any changes to the role of the reporters take this into account.

**Audit Function of SEDD**
Complaints are a way of providing ‘customer feedback’. The Ombudsman would be pleased to provide information from complaints received and determined to assist the Department in undertaking an audit of a particular authority.

**Safeguards**
It is proposed to give Ministers the power to commission an investigation into cases where there is a persistent pattern of decisions that do not comply with development-led plan policies, or with officer recommendations based on such policies. We would point out that the Ombudsman already has such powers. If, during the investigation of complaints, the Ombudsman is made aware of a pattern of decisions that could indicate systemic failure, she has the power to lay an ‘Other Report’ before Parliament in which she would
present evidence, findings and recommendations. She also has the power to make general recommendations in her Annual Report.

**Conclusion by the Ombudsman**

I am pleased to have the opportunity to contribute the above comments on the Planning etc (Scotland) Bill. Overall, I welcome the proposed changes. To avoid potential confusion or duplication of roles, I recommend that the SEDD and the Reports Unit continue their discussions on the place of the Ombudsman in dealing with complaints about planning in so far as they relate to maladministration or service failure.

The level of planning complaints is high and the SPSO provides an appropriate way of addressing them efficiently, cost-effectively and independently. The SPSO’s position - dealing with complaints about both the Executive and Local Authorities - provides an excellent opportunity to identify and report on any problem areas in the planning system.

**Professor Alice Brown**
Scottish Public Services Ombudsman
6 March 2006